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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 ROBERT GUERRINA,

7 Petitioner,

8 v.

9 WILLIAM GITTERE, *et al.*,

10 Respondents.

Case No. 3:20-cv-00132-MMD-CLB

ORDER

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12 *Pro Se* Petitioner Robert Guerrina, a Nevada prisoner, commenced this habeas  
13 action by filing a petition for writ of habeas corpus (ECF No. 1-1). This habeas matter is  
14 before the Court on consideration of Guerrina's application to proceed *in forma pauperis*  
15 ("IFP") (ECF No. 1), motion for appointment of counsel (ECF No. 1-2), and motion for  
16 documents (ECF No. 1-3). For the reasons discussed below, Guerrina's IFP application  
17 and motions are denied, Guerrina is instructed to pay the filing fee within 30 days, and the  
18 Court defers initial review under the Rules Governing Section 2254 Cases.

19 Under 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00  
20 filing fee is required to initiate a habeas action in a federal district court. The Court may  
21 authorize a person to begin an action without prepaying fees and costs if the person  
22 submits an IFP application on the approved form along with the appropriate supporting  
23 documentation. See 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2. Here, although Guerrina  
24 submitted the required form, the supporting documents show he is able to pay the \$5.00  
25 filing fee. (See ECF No. 3.) Thus, Guerrina does not qualify for a fee waiver. The Court  
26 therefore denies his IFP application. Guerrina has 30 days from the date of this order to  
27 have the filing fee sent to the Clerk of Court.

28 Guerrina seeks the appointment of counsel to assist him in this habeas

1 proceedings. (See ECF No. 1-2.) There is no constitutional right to appointed counsel in a  
2 federal habeas corpus proceeding. See *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015)  
3 (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). However, an indigent petitioner  
4 seeking relief under 28 U.S.C. § 2254 may request the appointment of counsel to pursue  
5 that relief. 18 U.S.C. § 3006A(a)(2)(B). The Court has discretion to appoint counsel when  
6 the interests of justice so require. 18 U.S.C. § 3006A(a)(2). The interests of justice so  
7 require “when the complexities of the case are such that denial of counsel would amount  
8 to a denial of due process.” *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980). In the  
9 absence of such circumstances, a request for counsel in a § 2254 proceeding is  
10 addressed to the sound discretion of the district court. *Id.* (citing *Dillon v. United States*,  
11 307 F.2d 445, 447 (9th Cir. 1962)). When a habeas petitioner has a good understanding  
12 of the issues and the ability to present forcefully and coherently his contentions, no  
13 attorney is legally required. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987).

14       Guerrina argues that his lack of comprehension and abilities, the complexity of the  
15 issues, and the need for investigation and discovery justify the appointment of counsel.  
16 The Court has reviewed the documents and pleadings filed in this matter and finds that  
17 appointment of counsel is not warranted. The issues raised in Guerrina’s petition are not  
18 particularly complex. Guerrina has demonstrated sufficient ability to write and articulate  
19 his claims and his purported lack of education has not significantly affected the quality of  
20 his petition. The Court appreciates that it is difficult for *pro se* petitioners to pursue their  
21 habeas claims and almost every *pro se* party would benefit from representation by  
22 counsel. However, Guerrina has not shown that denial of counsel would violate due  
23 process. As such, the motion to appoint counsel is denied.

24       Turning to Guerrina’s motion requesting documents from Respondents, the motion  
25 is premature. Guerrina seeks the State’s interviews with witnesses, which he did not  
26 receive during his criminal case. (ECF No. 1-3 at 1.) At this early juncture, the Court cannot  
27 determine whether circumstances exist in this case that would justify a grant of discovery;  
28 however, the Court notes that review of a federal habeas petition pursuant to 28 U.S.C.

1 § 2254(d) is generally limited to the record that was before the state courts. *Cullen v.*  
2 *Pinholster*, 563 U.S. 170, 181–82 (2011). The motion is denied.

3 It is therefore ordered that Petitioner Robert Guerrina's application to proceed *in*  
4 *forma pauperis* (ECF No. 1), motion for appointment of counsel (ECF No. 1-2), and motion  
5 for documents (ECF No. 1-3) are denied.

6 It is further ordered that the initial screening of Guerrina's petition for writ of habeas  
7 corpus (ECF No. 1-1) under the Rules Governing Section 2254 Cases is deferred to until  
8 such time as he has fully complied with this order.

9 It is further ordered that Guerrina must pay the \$5.00 filing fee within 30 days of the  
10 date of this order.

11 It is further ordered that the Clerk of Court is instructed to mail Guerrina *two* copies  
12 of this order. Guerrina must make the necessary arrangements to have a copy of this order  
13 attached to the check for the filing fee.

14 Failure to timely comply with this order will result in the dismissal of this action  
15 without further advance notice.

16 DATED THIS 8<sup>th</sup> day of April 2020.

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20 MIRANDA M. DU  
21 CHIEF UNITED STATES DISTRICT JUDGE  
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